*__THE HONOURABLE SRI JUSTICE V.V.S.RAO__

+WRIT PETITION No.26360 OF 2005

% 24-01-2006

KILARAPU SATYAVATI, W/o.NARAYANA MURTHY

And others

… Petitioners

AND

THE DISTRICT COLLECTOR, EAST GODAVARI DISTRICT AT KAKINADA

And another

… Respondents

!COUNSEL FOR PETITIONER: MR. O.MANOHER REDDY

^ COUNSEL FOR RESPONDENTS: G.P.FOR REVENUE (LAND ACQUISITION)

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>HEAD NOTE:

?CASES REFERRED:

1. 1988(1) ALT 32 (NRC) = 1989 (2) APLJ 147
2. 2003(6) ALD 247
3. 1985(2) ALT 84 (NRC)
4. (2004) 8 SCC 453
5. (2004) 8 SCC 14

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.26360 of 2005

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24.01.2006

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Between:

Kilarapu Satyavati, W/o.Narayana Murthy

And others

… Petitioners

AND

The District Collector, East Godavari District at Kakinada

And another

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.26360 of 2005

ORDER:

Feeling aggrieved by the notification issued under Section 4(1) of Land Acquisition Act, 1894 (the Act, for brevity), the three petitioners filed the instant writ petition seeking invalidation of the impugned notification. By the notification dated 18.11.2005, the District Collector, East Godavari District proposed to acquire the land admeasuring Acs.3.05 in survey Nos.218/3, 218/4 and 219/2 situated at Ramachandrapuram in East Godavari District. The land was sought to be acquired for establishment of compost yard to Ramachandrapuram Municipality. The said notification under Section 4(1) of the Act was followed by a declaration under Section 6(1) of the Act, which was published on 23.11.2005. Both these notifications are assailed in this writ petition. Be it noted while issuing notification under Section 6(1) of the Act, the first respondent dispensed with enquiry under Section 5A of the Act.

The petitioners claim that the land in survey Nos.218/3 and 218/4 originally belonged to the father-in-law of the second petitioner, who executed a Will on 10.7.1999 bequeathing property in favour of five children of petitioners 1 and 2, who are in possession of the property. Insofar as the land in survey No.219/2 is concerned, it is the case of the third petitioner that she is the second wife of one

Karri Veera Raghava Reddy and at the time of their marriage, her husband gave the land towards her maintenance. The petitioners claim that they are in possession of the property by the date of the issue of the notification.

The notifications issued under the Act are challenged *inter alia* on the ground that it is not competent for the first respondent to issue notification under Section 4(1) of the Act, that the District Collector has no power to issue notification for the purpose of acquiring the land for establishment of compost yard and that dispensing with the enquiry under Section 5A of the Act is illegal and arbitrary. It is also contended that the proceedings under the Act was initiated only due to extraneous considerations and due to interference of political people, who are enemically disposed of towards the petitioners.

At the stage of admission itself, the second respondent filed counter affidavit on behalf of the respondents, opposing the writ petition. The summary of the same is as follows. The Municipal Commissioner, Ramachandrapuram submitted a requisition for acquisition of land in an extent of Acs.3.05 in R.S.No.218/3 of Ramachandrapuram for establishment of compost yard of the municipality. The second respondent inspected the land and submitted proposals to the first respondent for approval of the draft notification invoking the provisions of Section 17(4) of the Act and also draft declaration. The draft declaration has been published in the A.P.Gazette of East Godavari on 18.11.2005, and in Telugu Newspapers on 24.11.2005 and English Newspapers on 22.11.2005. The substance of the notification was published in the locality on 03.12.2005. The draft declaration was published in the A.P. Gazette of East Godavari District on 23.11.2005 and also published in the Newspapers as well as in the locality. The second respondent also issued notices under Sections 9(1) and 10 of the Act and Sections 9(3) and 10 of the Act dated 07.12.2005 to all the land owners and persons interested to attend the award enquiry on 23.11.2005. The government of Andhra Pradesh by orders made in G.O.Ms.No.1131 (Revenue (K) Department dated 17.7.1986 delegated the powers to District Collectors for acquisition of land on behalf of Municipalities in the State for all the purposes under Sections 4, 5A, 6 and 17(4) of the Act. In view of the same, the notifications issued by the District Collector under Section 4(1) and declaration under Section 6 of the Act are legal and do not suffer from want of jurisdiction. The existing compost yard is situated in the heart of the city and is already filled and overflowing and therefore, to prevent health and hygienic risk involved to the public, there is urgent need to identify a new compost yard and accordingly, the enquiry under Section 5A of the Act is dispensed with. It is also averred that the compost yard will not cause any harm or nuisance to the surroundings, as the same is being established in accordance with Solid Waste Management Handling Rules, 2001. The biodegradable waste can be converted into vermin compost and non-degradable waste can be recycled and therefore, garbage handling is not hazardous nor does it cause any pollution.

The petitioners also filed a reply affidavit alleging that the order of the Government in G.O.Ms.No.1131 dated 17.7.1986 delegating powers to the District Collector is untenable, as it is a general delegation, which is under Section 3A of the Act. The

said provision enables the government to delegate powers to the District Collector only in such circumstances and conditions and delegating the powers by general order is illegal. The land of the petitioners is being acquired, it is alleged, for extraneous consideration and that acquisition not bona fide.

The learned Counsel for the petitioners, Sri O.Manoher Reddy, submits that the District Collector has not issued the impugned notifications in exercise of the powers delegated to him under Section 3A of the Act, as there is no specific delegation to the District Collector to acquire the land for establishment of compost yard. Secondly, he would urge that Section 3A of the Act does not enable the blanket delegation of powers and it can be done by the government only in such circumstances and subject to such conditions. Thirdly, he would urge that by impugned notification, the first respondent authorized the second respondent to exercise power under Section 4(2) of the Act and that being the delegatee of the powers under Sections 4(1) and 6 of the Act, the District Collector cannot further delegate the powers. The learned Counsel would further urge that under Section 4(1) of the Act, it is only the appropriate government as defined under Section 2(ee) of the Act, which can issue a notification under Section 4(1) of the Act, and therefore, the acquisition is without jurisdiction. He submits that enquiry under Section 5A of the Act has been dispensed with in a routine manner without application of mind and there is no urgency for dispensing with the enquiry under Section 5A of the Act taking away the valuable right of the petitioners to file objections.

The learned Assistant Government Pleader for Revenue (Land Acquisition), Sri Purushotham Reddy, after referring to relevant provisions of the Act, submits that having regard to Section 4(1) of the Act as amended by Andhra Pradesh Legislature, it is even competent to District Collector to issue a notification under Section 4(1) of the Act for acquiring the land for establishment of a compost yard by a Municipality. The Government already delegated the power to the District Collectors under Section 3A of the Act. He would also submit that there was urgent need for establishment of new compost yard and therefore, the enquiry under Section 5A of the Act was dispensed with.

The first question that requires consideration is whether the District Collector – the first respondent herein; is competent to acquire the land for establishment of a compost yard for Ramachandrapuram Municipality. It is necessary to notice the definitions of the terms “Collector” and “appropriate government”, as defined in clauses (c) and (ee) of Section 3 of the Act respectively.

> **Section 3 (c)**: the expression “Collector” means the Collector of a district, and includes a Deputy Commissioner and any officer specially appointed by the [appropriate Government] to perform the functions of a Collector under this Act.

> **Section 3 (ee)**: the expression “appropriate Government” means in relation to acquisition of land for the purposes of the Union, the Central Government, and, in relation to acquisition of land for any other purposes, the State Government.

The terms “Collector” or “District Collector” are not defined in the Act. Section 3(11) of General Clauses Act, 1897 (Central Act No.X of 1897) (hereafter called, the Central Act) defines the term “Collector” as to mean in a Presidency town, the Collector of Calcutta, Madras or Bombay, as the case may be, and elsewhere, the Chief Officer incharge of the revenue administration of a District. Section 3(6) of the A.P. General Clauses Act, 1891 (A.P.Act No.I of 1891) (hereafter called, the State Act) defines “Collector” so as to include every officer, who for the time being is authorized to. Further the term “District Collector” is defined under Section 3(8) of the State Act as to mean the Chief Local Officer incharge of the revenue administration of a District. There is not much difference in the definition of the term “Collector” or “District Collector” in the Central or State Act. The Officer, who is Chief Officer incharge of the revenue administration of a District, is the District Collector and when such powers are conferred on an Officer who is authorized to exercise the powers of a Collector, such officer also comes with in the definition of “District Collector”. As seen from the definition of the “Collector”, in Section 3 (c) of the Act, the definition is in two parts. One is descriptive part, according to which, “Collector” means the Collector of the District. Within this expression comes the “District Collector”, who is the Chief Officer of revenue administration of the District. There is inclusive part in the definition, according to which, a Deputy Commissioner and any Officer specially appointed by the appropriate Government to perform the functions of a Collector under the Act is also District Collector. The term “appropriate Government” is defined in Section 3(ee) of the Act as either the State Government, when the land is acquired for the purpose of the State and Central Government when the land is acquired for the purpose of the Union. This definition becomes relevant in the context of acquiring the land and initiating the procedure therefor as contained in Chapter-II of the Act.

Section 4 of the Act requires the appropriate Government to publish a notification to that effect in the official Gazette and also authorize any Officer to enter and survey the land. After conducting the enquiry as contemplated under Section 5A of the Act (in case it is not dispensed with), the appropriate Government has to issue a declaration that the land is needed for public purpose. While doing so, the appropriate Government shall have to consider the report if any made under Section 5A of the Act. Reading Sections 4(1) and 6 of the Act along with Sections 3(c) and 3(ee) of the Act, it becomes clear that in the usual course, it is only the appropriate Government, which can issue a notification under Section 4(1) of the Act proposing to acquire the land.

Section 4(1) and Section 6(1) of the Act were amended by Land Acquisition (A.P. Amendment) Act 1976 (State Act No.XXII of 1976). After amendment, these provisions read as under.

> **4. Publication of preliminary notification and powers of officers thereupon: -** (1) Whenever it appears to the appropriate Government or the District Collector, that land in any locality is needed or is likely to be needed

for any public purpose or for a company a notification to that effect shall be punished in the Official Gazette or The District Gazette and in two daily newspapers circulated in that locality of which at least one shall be in the regional language, and the Collector shall, within forty days from the date of publication of such notification cause public notice of the substance of such notification to be given at convenient place in the said locality, the last of the dates of such publication and giving of such public notice being of the dates of such publication and giving of such public notice being hereinafter referred to as the date of the publication of the notification.

(2) omitted….

6. Declaration that land is required for a public purpose: - (1) Where the appropriate Government or the District Collector is satisfied that any particular land is needed for the purpose of construction, extension or improvement of any dwelling house for the poor, a declaration shall be made to that effect under the signature of a Secretary to such Government or any other officer duly authorized to certify their orders or the District Collector as the case may be, and different declarations may be made, from time to time, in respect of different parcels of land covered by the same notification under Section 4, sub-section (1):

Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid wholly or partly out of public revenues or some fund controller or managed by a local authority.

A plain reading of Section 4(1) as amended in A.P. would show that if it appears that the land is required for any public purpose, appropriate Government or the District Collector may publish a notification to that effect. However under Section 6 of the Act – as amended in A.P. – the power of the District Collector to issue a declaration was restricted to the purpose of construction, extension or improvement of any dwelling house for the poor. If any public purpose exists for which the land is required the Government and the District Collector can issue notification under Section 4(1) of the Act, but when it comes to issuing a declaration under Section 6(1) of the Act, the Government is competent to issue a declaration for any public purpose whereas the District Collector can issue a declaration only when the land is required for providing dwelling houses to the poor. By the same amendment Act, Section 3A was inserted conferring power of delegation on the State Government. Under the said provision, the Government can direct that any power conferred or any duty imposed on them by the Act may be exercised or discharged by the District Collector. Accordingly, the Government of Andhra Pradesh issued G.O.Ms.No.1311 dated 17.7.1986 directing that all the District Collectors in the State shall exercise all powers under Sections 4, 5A, 6 and 17(4) of the Act for acquisition of the lands on behalf of the Municipalities. The relevant file in relation to the said Government Order is placed before this

The position that emerges from the above discussion is that by reason of the delegation of the powers to the District Collectors under Section 3A of the Act and also by reason of the amendments made to Sections 4(1) and 6(1) of the Act the appropriate Government or the District Collector can issue notifications under the Act for acquiring the land for Municipality. The submission of the learned Counsel for

the petitioner that the power under Section 3A of the Act can be delegated only in such circumstances on such conditions to be specified in the notification and for want of specification the delegation of the powers is illegal, cannot be accepted. As noticed hereinabove, Section 4(1) of the Act itself was amended and in a given case even without there being any delegation under Section 3A of the Act, a notification issued under Section 4(1) of the Act by the District Collector would be valid.

In **Munagala Sambi Reddy v District Collector, Guntur**, the notification issued by the District Collector for acquiring the land for Urban Authority under A.P. (Urban Areas Development) Act, 1975 was assailed as being invalid for want of jurisdiction. In the said case, this Court considered the validity of notification vide G.O.Ms.No.4288, dated 11.9.1980, under which powers were delegated by the Government to the District Collectors of some Districts to exercise the powers under Sections 4, 5A, 6 and 17(4) of the Act for the purpose of acquisition of land for Urban Development Authorities in the State. The said notification is *in pari materia* with the notification issued by the Government vide G.O.Ms.No.1131 dated 17.7.1986 delegating powers to the District Collectors for acquisition of land on behalf of Municipalities. Having regard to the provisions of Section 3A of the Act as well as Section 56(2) of A.P. Urban Areas (Development) Act, 1975, this Court held that the District Collector had power under the delegated authority. The relevant observations are as follows.

> It all depends upon the context and the language, which provide queue for construction. Therefore, in this case, so judged, the power of delegation postulated under sec.3A of the L.A.Act and the notification issued thereunder in G.O.Ms.No.4288 dated 11.9.1980, by which the powers of the Government have been delegated *inter alia* under sections 4 and 5A of the L.A.Act, to the District Collector concerned must be held to be applicable to these cases and so, it is competent for the District Collector to issue the notification under section 4(1)…
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> ... That apart, the language of section 3A of the L.A.Act as well as section 56(2) of the Urban Areas Act being in pari materia by virtue of referential legislation, the notification must also be deemed to have been issued within the meaning of section 56(2) of the Urban Areas Act. So construed, the District Collector had power under the delegated authority to issue the notification under section 4(1) of the L.A.Act.

A reference may also be made to the decision of this Court in **A.Narsamma v District Collector, Ananthapur** where this Court recorded the following observations.

> This Court, in writ Petition No.27731 of 995 dated 08.7.2003, considered a similar issue wherein it was held that the District Collectors are authorized to exercise powers vested in the State Government under Sections 5A and 17(4) of the Act and the relevant portion of the order reads as under:
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> “In exercise of their powers under Section 3-A of the Act, the Government of Andhra Pradesh issued G.O.Ms.No.1378, dated 15.10.1975 authorising the District Collectors to exercise powers vested in the State Government under Section 5A of the Act and Section 17(4) of the Act for the purpose of

acquisition of land for construction of any dwelling houses for the poor. By G.O.Ms.No.96, dated 20.1.1976 the Government, in exercise of their powers under Section 3(c) of the Act, appointed Revenue Divisional Officers, Tahsildars and Revenue Block Development Officers in their respective jurisdictions to perform functions of Collector under the Act for the purpose of acquisition of lands for dwelling houses to the poor.

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In **Ch.Venkataratnam v. State of Andhra Pradesh**, His Lordship Hon'ble Sri Justice M.Jagannadha Rao (as he then was) considered the question whether it is competent for Tahsildar to conduct enquiry under Section 5A and submit report to the Collector. After referring to G.O.Ms.No.1378, dated 15.10.1975, His Lordship held as under:

Section 3A of the Act permits delegation of the functions of the Government to the District Collectors and in exercise of that power the Governor of Andhra Pradesh has delegated to the District Collector the authority to take a decision under Section 5A(2) of the Land Acquisition Act in cases relating to construction, extensionor improvement of any dwelling house for the poor. The Tahsildar has ample jurisdiction to conduct enquiry under Section 5A and submit the report to the Collector, who, in his turn, was delegated with the powers of the Government under Section 3A read with G.O.Ms.No.1378 Rev.(K), dated 15.10.1975 to take a decision on the report. A copy of the report of the Land Acquisition Officer prepared under Section 5A need not be supplied to the petitioner."

The second question that requires consideration is whether the action of the first respondent in dispensing with the enquiry under Section 5A of the Act suffers from any infirmity. It is no doubt true that no person can be deprived of his/her property "save by authority of law" as per Article 300A of Constitution of India. Therefore, the right to file objections by a person interested in the land is a valuable right, which cannot be lightly taken away. Though it is subjective satisfaction of the acquiring authority in exercising powers Section 17(4) of the Act, the enquiry under Section 5A of the Act cannot be dispensed with in a routine manner. The acquiring authority has to take into consideration different aspects of the matter while exercising powers under Section 17(4) of the Act.

In **Union of India v Krishan Lal Arneja**, the Supreme Court explained the concept of urgency as incorporated in Section 17(4) of the Act with reference to earlier decided cases in the following terms.

"Urgency" for invoking of Section 17 of the Act should be one arising naturally out of circumstances, which exist when the decision to acquire the land is taken and not such, which is the result of serious lapse or gross delay

> on the part of the acquiring authority. However, the position may be different where the delay is caused or occasioned by the landowner himself. Failure to take timely action for acquisition by the authorities of the Union of India cannot be a ground to invoke the urgency clause to the serious detriment of the right of the landowner to raise objections to the acquisition under Section 5-A.

While reiterating that the authority must have subjective satisfaction of the need for invoking urgency clause under Section 17 of the Act, the Supreme Court further laid down as under.

> The authority must have subjective satisfaction of the need for invoking urgency clause under Section 17 keeping in mind the nature of the public purpose, real urgency that the situation demands and the time factor i.e. whether taking possession of the property can wait for a minimum period within which the objections could be received from the landowners and the inquiry under Section 5-A of the Act could be completed. In other words, if power under Section 17 is not exercised, the very purpose for which the land is being acquired urgently would be frustrated or defeated. Normally urgency to acquire a land for public purpose does not arise suddenly or overnight but sometimes such urgency may arise unexpectedly, exceptionally or extraordinarily depending on situations such as due to earthquake, flood or some specific time-bound project where the delay is likely to render the purpose nugatory or infructuous. A citizen's property can be acquired in accordance with law but in the absence of real and genuine urgency, it may not be appropriate to deprive an aggrieved party of a fair and just opportunity of putting forth its objections for due consideration of the acquiring authority. While applying the urgency clause, the State should indeed act with due care and responsibility.

In **Union of India v Mukesh Hans**, the Supreme Court considered the question as to interpretation of Section 17(4) of the Act and the procedure to be followed by the authority while dispensing with the enquiry contemplated under Section 5A of the Act. Taking into consideration subsections (1) and (2) of Section 17 of the Act, the Supreme Court interpreted Section 17(4) of the Act as under.

> A careful perusal of this provision which is an exception to the normal mode of acquisition contemplated under the Act shows that mere existence of urgency or unforeseen emergency though is a condition precedent for invoking Section 17(4), that by itself is not sufficient to direct the dispensation of the Section 5-A inquiry. It requires an opinion to be formed by the Government concerned that along with the existence of such urgency or unforeseen emergency there is also a need for dispensing with Section 5-A inquiry which indicates that the legislature intended the appropriate Government to apply its mind before dispensing with Section 5-A inquiry. It also indicates that mere existence of an urgency under Section 17(1) or unforeseen emergency under Section 17(2) would not by itself be sufficient for dispensing with Section 5-A inquiry. If that was not the intention of the legislature then the latter part of sub-section (4) of Section 17 would not have been necessary and the legislature in Sections 17(1) and (2) itself could have incorporated that in such situation of existence of urgency or unforeseen emergency automatically Section 5-A inquiry will be dispensed with. But then that is not the language of the section, which in our opinion requires the appropriate Government to further consider the need for dispensing with Section 5-A inquiry in spite of the existence of unforeseen emergency. This understanding of ours as to the requirement of an application of mind by the appropriate Government while dispensing with Section 5-A inquiry does not mean that in each and every case when there is an urgency contemplated under Section 17(1) and unforeseen emergency contemplated under Section 17(2) exists that by itself would not contain the need for dispensing with Section 5-A inquiry. It is possible in a given case the urgency noticed by the appropriate Government under Section 17(1) or the unforeseen emergency under Section 17(2) itself may be of such degree that it could require the appropriate Government on that very basis to dispense with the inquiry under Section 5-A but then there is a need for application of mind by the appropriate Government that such an urgency for dispensation of the Section 5-A inquiry is inherent in the two types of urgencies

contemplated under Sections 17(1) and (2) of the Act.

Even though no award is passed acquiring the land, subsection (2) of Section 17 of the Act enumerates few situations where the urgency can be presumed. But Section 17(2) of the Act is not exhaustive. Section 17(2)(b)(ii)(a) of the Act is to the effect that whenever in the opinion of the Collector it becomes necessary to acquire immediate possession of any land for construction or extension or improvement of any structure for the common use of the inhabitants, he may acquire the immediate possession of the land. As explained in the counter affidavit by the respondents, the existing compost yard in the middle of Ramachandrapuram town is already filled and any further dumping of the urban waste would cause health and hygienic problems. In a considered opinion of this Court, there is a real urgency for invoking subsection (4) of Section 17. The power was exercised validly and no exception can be taken for that action. Further, as held by the Supreme Court in the two above cited decisions, it is the subjective satisfaction of the acquiring authority that matters while invoking urgency clause in subsection (4) and the point on the question of urgency cannot be stretched too far to replace satisfaction of the acquiring authority by courts' satisfaction.

Though other grounds are urged in the affidavit accompanying the writ petition, the learned Counsel for the petitioners did not press the same at the time of argument on 09.12.2005, 16.12.2005 and 27.12.2005.

The writ petition, for the above reasons, is devoid of any merit and is accordingly dismissed.

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(**V.V.S. RAO,J**)

.01.2006.

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NOTE:

1) Issue order copy by 28.1.2006.

2) **LR copy be marked.**

(By order)

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To

One fair copy to the Hon'ble Mr.Justice V.V.S.Rao (for his Lordships kind perusal)

1 The District Collector, Kakinada, East Godavari Dist.
2 The Sub Collector, Rajahmundry, East Godavari Dist.
3 The Principal Secretary, Government of Andhra Pradesh, Revenue Department, Secretariat, Hyderabad.
4 8 LR copies.

5 Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.

6 The Secretary, A.P.Advocates Association Library, High Court Buildings, Hyderabad.

7 2 CCs to the G.P. for Revenue (Land Acquisition), High Court Buildings, Hyderabad (OUT).

8 2 CD copies.